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**PAID**  
#18439

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

U.S. DISTRICT COURT  
EAST DIST. MICH.  
BAY CITY

May 5 8 21 AM '04

FILED

10

DONALD A. DEWEY as Conservator  
for NATHAN A. DEWEY, and  
DONALD A. DEWEY and ANN DEWEY,  
as individuals

USDC NO: 4: **04 - 10125**

Plaintiffs,

Hon. **Judge David M. Lawson**

-VS-

**MAGISTRATE JUDGE  
CHARLES E. BINDER**

PRESQUE ISLE COUNTY, ROBERT SCHELL,  
ALLAN H. BRUDER, MICHAEL A. DARGA, GARY  
L. WOZNAK, DONALD G. FIELD, SHERIFF  
TERRY D. FLEWELLING, JAMIE  
MEYERS, LISA SCHULTZ, KEN BIELES, and  
JOHN DOE(S) and/or JANE DOE(S) AS YET  
UNKNOWN, JOINTLY AND SEVERALLY

Defendants.

JOHN H. UNDERHILL, P.C.  
John H. Underhill (P42326)  
Attorney for Plaintiffs  
718 Ashmun Street  
Sault Ste. Marie, MI 49783  
(906) 632-6020

HARRY INGLESON II (P26096)  
Co-Counsel for Plaintiffs  
1231 US 31 North  
Petoskey, MI 49770  
(231) 347-4180

**THERE IS NO OTHER PENDING OR RESOLVED CIVIL ACTION ARISING OUT  
OF THE TRANSACTION OR OCCURRENCE ALLEGED IN THIS COMPLAINT.**

**COMPLAINT**

NOW COMES Plaintiffs Donald A. Dewey as Conservator for Nathan A.  
Dewey, and Donald A. Dewey and Ann Dewey, as individuals, by and through their  
counsel, John H. Underhill, P.C., by John H. Underhill, and Harry Ingleson II and for  
their Complaint against the above named Defendants, say as follows:

1. Plaintiff Donald A. Dewey is the duly appointed conservator for Nathan  
A. Dewey, his son, by virtue of Presque Isle County Probate Court Order dated

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February 19, 2003.

2. Donald A. Dewey and Ann Dewey, husband and wife, and caretakers of Nathan A. Dewey, are residents of the County of Presque Isle, state of Michigan.

3. Defendant Presque Isle County is a governmental entity existing by virtue of the laws of the state of Michigan who is charged with oversight responsibilities over its subdivisions of county government including, but not limited to, the Presque Isle County Sheriff's Department including operations of the Presque Isle County Jail.

4. Robert Schell, Allan H. Bruder, Michael A. Darga, Gary L. Wozniak and Donald G. Field are the duly elected officials who together constituted the Presque Isle County Board of Commissioners on December 24, 2002 and for sometime prior thereto, who, in their official capacities, were the operating "arm" of Presque Isle County government charged with creating and/or implementing the operational policies of Presque Isle County.

5. Terry D. Flewelling was/is the sheriff of Presque Isle County who, inter alia, controls and operates the Presque Isle County Jail and who has oversight responsibility(s) over the jail including control of the individuals employed at the jail who are charged with taking care of incarcerated individuals and/or otherwise creating and/or implementing the policies of Presque Isle County and/or the Presque Isle County Sheriff's Department as it specifically relates to jail operations and, specifically, to make sure the inmates are treated and protected in a manner consistent with their constitutional rights including providing necessary medical care and treatment to those incarcerated in the Presque Isle County Jail.

6. Jamie Meyers was/is an employee of the Presque Isle County Sheriff's

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Department and/or Presque Isle County Jail who was on duty on December 23, 2002 and/or December 24, 2002.

7. Lisa Schultz was/is an employee of the Presque Isle County Sheriff's Department and/or Presque Isle County Jail who was on duty on December 23, 2002 and/or December 24, 2002.

8. Ken Bieles was/is an employee of the Presque Isle County Sheriff's Department and/or Presque Isle County Jail who was on duty on December 23, 2002 and/or December 24, 2002.

9. John Doe(s) and/or Jane Doe(s), who are as yet unknown, were/are employees of Presque Isle County Sheriff's Department and/or Presque Isle County Jail who were on duty December 24, 2002 and/or during other time periods relevant to the actions and/or inactions complained of herein.

10. During November of 2002, Nathan A. Dewey, a teenager, was incarcerated in the Presque Isle County Jail. It was known at that time by the Presque Isle County Sheriff and Jail personnel that Nathan A. Dewey had suicidal thoughts and, in fact, they knew that Nathan A. Dewey suffered from severe depression, other mental medical conditions and had suicidal thoughts over an appreciable period of time prior thereto.

11. In fact, after Nathan A. Dewey's initial incarceration in November of 2002, and while he was still incarcerated, the employees of the Presque Isle County Sheriff's Department and/or of the Presque Isle County Jail became aware that Nathan A. Dewey, in furtherance of his suicidal thoughts and tendencies, inflicted injuries to his body.

12. In fact, on or about December 21, 2002, because jail personnel

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became aware that Nathan A. Dewey had inflicted injuries upon his body, Dewey was moved to a "holding" cell but jail personnel failed to remove all instruments with which he could use to injure himself and/or attempt suicide.

13. On or about December 22, 2002, jail personnel became aware that, during and/or after a visitation with his parents, Nathan A. Dewey became agitated and was physically acting out that agitation.

14. On or about December 23, 2002 and/or prior thereto, employees of the Presque Isle County Sheriff's Department and/or Presque Isle County Jail became aware of Nathan A. Dewey's deteriorating mental condition and the strong likelihood that he would attempt suicide.

15. On December 23, 2002, Dewey was transported from the jail to obtain mental health services and to be examined by a medical doctor who then provided specific instructions/directions to jail personnel to institute "suicide preventions and remove all possible methods". (See attached exhibit "A".)

16. Despite receiving the above described instructions/directions and having knowledge of the mental condition(s), suicidal thoughts and tendencies of Nathan A. Dewey over an appreciable period of time, Presque Isle County Jail officials, in "deliberate indifference" to the obvious known serious medical needs of Nathan A. Dewey, utterly failed to follow those instructions/directions given by the treating medical doctor and, in fact, even provided the means for which Nathan A. Dewey could attempt suicide by hanging himself which, he did, within hours of being diagnosed with having suicidal tendencies and being returned to the Presque Isle County jail under a suicide watch.

17. In fact, Nathan A. Dewey was only discovered hanging from the bars

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of the cell he was in when another prisoner awoke to observe him hanging. That other prisoner was only able to notify jail personnel by shouting and throwing personal items at the window of the dispatch office. In other words, there was no direct observation and/or communication link to keep a continuing watch on Nathan A. Dewey, a teenager, in "deliberate indifference" to the serious medical needs of Nathan A. Dewey.

18. To add insult to injury, and in "deliberate indifference" to the serious medical needs of Nathan A. Dewey, after Nathan A. Dewey was found hanging in his cell by another prisoner who began attempts to revive Nathan A. Dewey, jail personnel, who may have been qualified to provide CPR, failed to immediately provide CPR in favor of simply directing the other prisoner to continue to attempt CPR.

19. There existed a special relationship between Nathan A. Dewey and his jailers by virtue of his incarceration.

20. Defendants Presque Isle County, Robert Schell, Allan H. Bruder, Michael A. Darga, Gary L. Wozniak, Donald G. Field, and Sheriff Terry D. Flewelling utterly failed to have in place any appropriate policy and/or any existing policy was wholly inadequate and/or was not followed throughout November and December 2002 when Nathan A. Dewey physically acted out his suicidal tendencies by engaging in self-injurious behavior and finally attempted suicide with a bed sheet that was provided to him in utter disregard for his safety considering the knowledge his jailors had of the strong likelihood that Nathan A. Dewey would attempt suicide.

21. In fact, having notice of a substantial risk to Nathan A. Dewey's safety over an appreciable period of time by virtue of Dewey's mental condition(s), prior

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thoughts of suicide and his escalating outward manifestations of self-destructive injurious behavior revealing his obvious intent to harm and/or kill himself, the Defendants, as a custom and/or policy and/or practice, manifested a "deliberate indifference" to the serious medical needs of those incarcerated in the Presque Isle jail who, like Nathan A. Dewey, because of mental conditions and/or suicidal tendencies, should have been put in a cell the total confines of which could be readily observed, by sight and/or sound, so as to ensure the reasonable safety of those who needed to be observed because of their mental condition(s) and consequent suicidal tendencies and/or self injurious behavior, by failing to have such a room and/or cell available and/or failing, as an alternative, to have in place a custom and/or policy whereas those inmates, like Nathan A. Dewey, would be put in a room and/or cell that was available where they could be closely monitored, by sight and/or sound, to ensure their safety in light of a known strong likelihood of risk that they would attempt suicide and/or otherwise harm themselves.

22. It was the custom and/or practice and/or policy of Presque Isle County officials and/or Presque Isle Sheriff's Department officials and/or Presque Isle jail supervisory officials to place those incarcerated in the Presque Isle jail who, for one reason or another, required observation to keep them reasonably safe, in a "holding tank" which, because of a steel plate, could allow an inmate, such as Nathan A. Dewey, to attempt suicide and/or engage in self-injurious behavior without being noticed from the "dispatch" area and/or from outside the cell.

23. Further, it was the custom and/or practice and/or policy of Presque Isle County officials and/or Presque Isle Sheriff's Department officials and/or Presque Isle jail supervisory officials not to properly train those jail employees charged with

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ensuring the reasonable safety of those incarcerated in the Presque Isle County jail, to properly monitor the activities of those inmates they knew possessed a strong likelihood of attempting suicide and/or self-injurious behavior and/or to take all reasonable steps to at least ensure that the means and/or instrumentalities would not be provided to increase the risk that those inmates could and/or would attempt suicide and/or otherwise inflict injuries upon themselves.

24. The policy(s), practices, actions and/or inactions of the Defendants, as more particularly described above, constitute "deliberate indifference" to the serious medical needs of Nathan A. Dewey in violation of Dewey's constitutional rights as guaranteed by the 8<sup>th</sup> Amendment to the United States Constitution as enforced by 42 USC § 1983.

25. As a result of the Defendants' "deliberate indifference" to the serious medical needs of Nathan A. Dewey, as more particularly described above, and as a direct result of providing Dewey with the means to attempt suicide, Dewey did attempt suicide and suffered catastrophic injuries which will require Dewey to be provided with 24 hour care for the rest of his life.

26. As a result of the Defendants' "deliberate indifference" to the serious medical needs of Nathan A. Dewey, as more particularly described above, and as a direct result of providing Dewey with the means to attempt suicide, Plaintiffs' Donald and Ann Dewey have suffered, and will continue to suffer, significant economic damages representing the costs associated with providing custodial and attendant care, room and board, and transportation of Nathan A. Dewey for purposes of medical treatment and further and other economic damages related to providing attendant and custodial care to Nathan A. Dewey. They seek to be

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reimbursed for services already provided and costs already incurred as well a money judgment to reflect those services and costs that are sure to be provided and/or incurred in the future for the rest of Nathan A. Dewey's life.

27. This case is brought pursuant to 42 USC § 1983.

28. This Court has jurisdiction pursuant to 28 USC § 1331.

29. The Plaintiffs' seek money judgment in excess of \$75,000.00 reflecting all damages allowed by law as well as all costs and fees allowed by law.

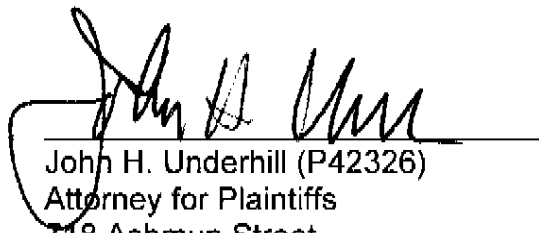
30. The Plaintiffs' seek trial by jury.

**WHEREFORE**, Plaintiffs seek money judgment in excess of \$75,000.00 as found appropriate by the trier of fact together with all costs, interest and attorney fees so wrongfully incurred.

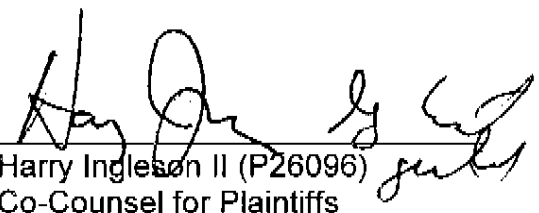
RESPECTFULLY SUBMITTED,

JOHN H. UNDERHILL, P.C.

Dated: 5/4/04

  
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Dated: 5/4/04

  
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The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## I. (a) PLAINTIFFS

DONALD A. DEWEY as Conservator for  
NATHAN A. DEWEY, and DONALD A. DEWEY  
and ANN DEWEY, as individuals

(b) County of Residence of First Listed Presque Isle

(c) Attorney's (Firm Name, Address, and Telephone Number)

John H. Underhill, P.C. P-42326  
718 Ashmun, Sault Ste. Marie, MI 49783

Harry Ingleson II P-26096  
1231 US 31N, Petoskey, MI 49770

DEFENDANTS Presque Isle County, Robert  
Schell, Allan H. Bruder, Michael Darga,  
Gary Wozniak, Donald Field, Sheriff Terry  
Flewelling, Jamie Meyers, Lisa Schultz,  
Ken Bieles & John Doe(s) &/or Jane Doe(s)  
as yet unknown, jointly and severally  
County of Residence of First Listed Presque Isle

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorney's (Firm Name)

04-10125

Judge David M. Lawson

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item 11)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only))

- Citizen of This State ☐ 1 ☐ 1 PLA DEF  
Citizen of Another ☐ 2 ☐ 2 Incorporated and Principal of Business in Another State ☐ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent/Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 635 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	

## V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multi district Litigation  
☐ 7 Appeal to District Judge from Magistrate

## VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

42 USC 1983 - Violation of U.S. Constitution 8th Amendment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND in excess of \$75,000.00 ☐ CHECK YES only if demanded in complaint: JURY DEMAND ☒ Yes ☐ No

VIII. RELATED CASE(S) (See instructions):  
IF ANY

JUDGE

DOCKET  
NUMBER

DATE

May 4, 2004

SIGNATURE OF ATTORNEY OF RECORD

John H. Underhill

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes: \_\_\_\_\_